

Leg File

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6 May 1986

MEMORANDUM FOR: General Counsel
C/EPS/DO
C/CTC/DO
NIO/CT
C/PCS/DO
Assistant General Counsel, DO

FROM:
OCA/Legislation

STAT

SUBJECT: Additional Co-sponsors on S. 2335

1. By memorandum dated 25 April 1986, this office provided you a copy of S. 2335, the "Anti-Terrorism Act of 1986," as introduced by Senate Majority Leader, Dole.

2. Attached for your information are pages S5041-5042 from the Congressional Record of April 30, 1986, which contain the remarks of Senator Dole upon the addition of various Senators as co-sponsors to S. 2335.

3. Note the final paragraph of Senator Dole's remarks in which he calls upon the Senate Foreign Relations Committee to give the bill serious consideration. Senator Lugar, Chairman of that Committee, has yet to decide whether or not to support the legislation or even schedule a hearing on it. We understand he is concerned that if one opens the War Powers Act to amendment, the result might not be controllable and could be very unfavorable.

STAT

Attachment
as stated

SUBJECT: Additional Co-sponsors on S. 2335

Distribution:

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PROCEEDINGS AND DEBATES OF THE 99th CONGRESS, SECOND SESSION

Vol. 132

WASHINGTON, WEDNESDAY, APRIL 30, 1986

No. 56

Senate

(Legislative day of Monday, April 28, 1986)

The Senate met at 10 a.m., on the expiration of the recess, and was called to order by the President pro tempore (Mr. THURMOND).

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray:

Creator God, Supreme Lord of the universe, a massive cloud, filled with the poison of radioactive fallout, hovers over the Earth—witness to the blind side of our vaunted human progress. With all our genius, we think we have got it all together while everything is falling apart. We boast of our technological progress and are frustrated by its byproducts: toxic waste, environmental pollution, and the relentless threat of nuclear annihilation. Psychiatrists, psychologists, and professional counselors by the thousands prosper in our cities—knowledge explodes into scores of disciplines—yet social decay persists: divorce, battered wives, abused children, sexual immorality, drug abuse, alcoholism, poverty, oppression, and crime not only remain unsolved but increase epidemically. No one wants war, but we cannot find the way of peace.

Patient Father in Heaven, help us hear and heed the words of President Lincoln calling the Nation to a day of national humiliation, fasting, and prayer 120 years ago today: "We have grown in numbers, wealth, and power as no other nation has grown, but we have forgotten God . . . We have vainly imagined that all these blessings were produced by some superior virtue and wisdom of our own. It behooves us then, to humble ourselves, to confess our national sins, and to pray for clemency and forgiveness."

Gracious God, awaken us to our situation, turn our hearts to You, in the name of Him Who is love incarnate. Amen.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The able distinguished majority leader, Senator DOLE, is recognized.

Mr. DOLE. Mr. President, Senator THURMOND, I thank the distinguished Presiding Officer.

SCHEDULE

Mr. DOLE. Under the standing order the leaders have 10 minutes each, followed by special orders in favor of Senators HAWKINS, DeCONCINI, WILSON, KERRY, CRANSTON, and PROXMIRE of not to exceed 5 minutes each; routine morning business not to extend beyond 10:45 a.m. with Senators permitted to speak therein for not more than 5 minutes each.

At 10:45, the Senate will resume consideration of the budget resolution. Votes will occur throughout the day. There will not be a late evening session tonight because the distinguished chairman of the Budget Committee has a longstanding previous engagement. So, I would guess we will stay on the bill until 6 or 7 o'clock. There are approximately 15 hours remaining on the budget. I hope to complete action on the budget this week. Much will depend on whether we can put together a bipartisan substitute that might have enough votes to pass. But in any event, that is being worked on and we ought to have some indication of the success of that effort by late today or early tomorrow.

Again, I indicate to my colleagues there will be votes today. I hope that Members who have amendments will come to the floor. It is very difficult for the managers, Senator DOMENICI and Senator CHILES, to make progress on the bill unless those who have amendments are willing to offer them. I must say they have been most helpful and most cooperative. I would guess that some of the amendments

can be resolved without rollcall votes. I hope that can be done.

TERRORISM AND THE WAR POWERS RESOLUTION

Mr. DOLE. Mr. President, on April 17, the distinguished Senator from Alabama (Mr. DENTON) joined me in introducing S. 2335, the Anti-Terrorism Act of 1986.

ADDED COSPONSORS

I now ask unanimous consent that the distinguished Senator from Wyoming (Mr. WALLOP), the distinguished Senator from California (Mr. WILSON), and the distinguished Senator from South Carolina (Mr. THURMOND) be added as cosponsors.

The PRESIDING OFFICER (Mr. PRESSLER). Without objection, it is so ordered.

WHY WE NEED NEW LEGISLATION

Mr. DOLE. Mr. President, introduction of S. 2335 has generated some useful debate—here in the Senate, in the media, and among the public—about the War Powers Resolution of 1973. Some have asked whether we need to amend that resolution at all. My answer—an answer I give as one of the original sponsors of the War Powers Resolution—is "Yes," for a number of reasons.

TERRORISM NOT FORESEEN AS THREAT

First, when we drafted, debated, and enacted the War Powers Resolution in 1973, we did not envision terrorism as a major threat to our national security or the safety of our citizens, either military or civilian. Although there was some occasional mention in debate of the kinds of attacks we today would see as terrorism, the word "terrorism" was not mentioned, and it was certainly not envisioned as a worldwide, state-sponsored form of aggression.

On the contrary, the overriding focus and goal of our debate in 1973 was finding a way to deal with the kinds of conventional warfare prob-

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

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lems current or known at the time: The Vietnam war, the Gulf of Tonkin Resolution, the Cuban missile crisis. We gave no serious thought to whether the measures we were enacting would be appropriate to deal with new or emerging kinds of aggression.

ATTACKS ON AMERICAN CITIZENS DISCOUNTED

Second, in 1973, we did not envision the situation where innocent American travelers—tourists—would be targeted for attack as part of an adversary's anti-American strategy. The 1973 debate made clear that the resolution was primarily intended to serve as a framework for an American response to attacks on our territory or our military forces, not our citizens.

The legislative record does indicate an appreciation that American civilians might come into danger as a result of foreign attacks, but in those cases, it suggests the President's authority to respond would be limited, in the words of the committee report:

... only to rescue endangered American citizens. He may not use the circumstances of their endangered position to pursue a policy objective beyond safe and expedient evacuation.

In other words, all other potential uses of force on behalf of American citizens—deterrent attacks, preemptive strikes to eliminate original or subsequent attacks, retaliatory strikes—all these were seen by some to be precluded.

DANGER OF LEAKS

Third, when mandating prior consultations with Congress, we did not take fully into account the danger of leaks to ongoing military operations. In a world of instantaneous, global communications and an aggressive international media, a leak in Washington can be transmitted to Moscow, or Tripoli, or anywhere in the world within minutes, endangering American servicemen.

Nor did we give sufficient weight to the fact that reports of just the act of consultations—never mind the content of the consultations—might tip our hand to the enemy about what we intend, thereby endangering American lives. It was certainly not helpful, in the hours before the strike against Libya, that the media was full of speculation—some of it accurate—about what we were being told, in strictest confidence, at the White House.

REPORTING REQUIREMENT PROBLEMS WERE FORESEEN IN SENATE

Finally, I would cite another problem—this one, in fact, foreseen by many Senators—about the 48-hour reporting requirement in the War Powers Resolution. The Senate sought language requiring only that the report be filed "promptly," noting:

The important thing is that the report must ... be comprehensive. It might take a few days for the executive branch to assemble all the facts from the field, as well as to assemble the various intelligence reports and, most importantly, to prepare an informed judgment on the "estimated scope of such hostilities."

Unfortunately, the House forced the conference to accept the 48-hour stricture, a timeframe which today almost guarantees that the report we receive will be incomplete, as the post-Libyan bombing report was.

GOLDWATER AND FULBRIGHT URGED FLEXIBILITY

Some Senators warned that what we were about might be dangerous or too restrictive. The distinguished Senator from Arizona, Senator GOLDWATER, in particular, urged that we restrain our impulse to establish a permanent framework, set specific guidelines, and lay down narrow parameters inside which the President would thereafter be forced to operate. Senator GOLDWATER was one of only a few who pointed out that the future might well bring wholly new and mortally dangerous forms of aggression, demanding actions or flexibility which in 1973 seemed unnecessary.

Another very distinguished Senator of that era, the chairman of the Foreign Relations Committee, Senator Fulbright—a Senator, I might add, whose reputation as a defender of congressional prerogatives in the conduct of our foreign policy is beyond reproach—even Senator Fulbright urged that we not unduly tie the President's hands. Let me quote from his "supplemental views" to the Foreign Relations report:

I am inclined to say nothing about the President's emergency powers ... or to include a simple substitute (for the sections describing those powers) in which it would simply be recognized that the President, under certain emergency conditions, may find it absolutely essential to use the Armed Forces without, or prior to, congressional authorization.

And on the question of prior consultations, Fulbright wrote:

A wise President would think carefully before acting. He might even go so far as to consult with Members of Congress ... before committing the Armed Forces.

TERRORISM CREATES NEW BALL GAME

The rise of international terrorism and the emergence of madmen like Qadhafi have proven Senators GOLDWATER and Fulbright dead right. We do have a new form of aggression, directed as often against the average, innocent American tourist as against our soldiers. We do face a wholly new kind of threat, planned and carried out by powerful governments led by certifiable lunatics. We do live in a city where "leaks" are a way of life, and in an era of technology where one, even unintentional, "leak" can cost an American soldier his life.

It is the President that has the burden of making the hardest decisions. It is the President who has the principal responsibility for protecting the lives of Americans, military and civilians alike, who serve our country and who engage in innocent travel around the globe. And it is the President alone who has full-time access to the complete information on which to base policies and actions to deal with terrorism and terrorists.

We do not fight our military adversaries with 1973 weapons. Let us not try to cope with our terrorist adversaries hobbled by restrictions built into 1973 laws. Let's give the President the authority, the flexibility and—above all else—the support he needs in 1986 to fight this grave threat to our Nation and our people.

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Mr. President, I suggest that there are times when it seems to me we need to go back and take a look at what we might have done—in this case, about 13 years ago.

I believe in consultation, but I also believe it is time we clarify the War Powers Act and define what we mean by international terrorism as an act of aggression against American citizens—not in uniform, but civilians, tourists, passengers, whoever.

I hope the Senate Foreign Relations Committee will carefully look at the proposal that has been introduced. It may not be perfect; perhaps it should be changed. But I do suggest that we are now faced with a different problem than the one we had in 1973. We are not talking about committing American troops for a period of 1 day, 3 days, 5 days. We are talking about a military strike, which in the case of Libya, took 11 minutes.

It seems to me that it is time to update the War Powers Resolution and to recognize the changes that have taken place since 1973.

THE CONGRESSIONAL CALL TO CONSCIENCE

FREEDOM TO EMIGRATE DENIED

Mr. DOLE. Mr. President, I rise today to speak on behalf of an estimated 350,000 Soviet Jews who have been refused the freedom of emigration. We have witnessed their suffering and heard their pleas. Through the Congressional Call to Conscience, I reaffirm our demand that the Soviet Union adhere to international conventions and humanitarian concerns by granting them their right to free movement beyond Soviet borders.

The situation is bleak. Emigration has dropped from a high of over 50,000 in 1979 to just over 1,000 in 1985. Moreover, those remaining in the Soviet Union continue to be subjected to intolerable violations of human rights, including harassment, searches, job loss, arrests and imprisonment.

THE YAKIR CASE

One case of special interest is that of Evgeny Yakir. The Yakir family, which has sought release from the U.S.S.R. since 1973, has been "adopted" by the Temple of B'nai Jehudah [Ya-who-da] in Kansas City in the hopes of facilitating the emigration. Dr. Yakir, his wife Rimma, and son Aleksander, were refused exit visas on the basis of Evgeny's secret classification as a mechanical engineer, even